

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 MICHAEL GREEN
a/k/a KEVIN BREWER
11 (CDCR # AC5033),
12 Petitioner,

No. C 12-1689 SI (pr)

ORDER TO SHOW CAUSE AND SETTING SCHEDULE

12 || Petitioner,

13 v.

14 || WILLIAM KNIPP, warden,

Respondent.

17 Michael Green a/k/a Kevin Brewer filed this action for a writ of habeas corpus pursuant
18 to 28 U.S.C. § 2254 to challenge his conviction in Alameda County Superior Court for
19 continuous sexual abuse of a child and aggravated sexual assault on a child. The court reviewed
20 his amended petition and ordered him to file a second amended petition to correct certain
21 deficiencies. Brewer then filed a second amended petition. The court reviewed the second
22 amended petition, identified several cognizable claims and dismissed Claim 8 with leave to
23 amend.

24 Brewer has filed a document entitled "Petition Amendments" (Docket # 18) in which he
25 proposes to amend three claims in his second amended petition. His proposed amendments are
26 rejected. Brewer's proposed amendment to Claim 3 is dismissed because it urges only a
27 violation of state law. As the court explained in the order of dismissal with leave to amend,
28 federal habeas relief is not available for violations of state law. *See* Docket # 17, p. 5. His

1 proposed amendment to Claim 4 is dismissed because, with or without his proposed amendment,
2 Claim 4 is patently meritless for the reasons explained in the order of dismissal with leave to
3 amend. *Id.* at 4. Brewer's proposed amendment to Claim 8 is dismissed because it fails to cure
4 the deficiencies identified in the order of dismissal with leave to amend. *Id.* at 4-5. Claim 8 is
5 dismissed for failure to identify the facts in support of it.

6 Brewer also has filed a "motion to add another amendment." Docket # 19. The motion
7 is DENIED. The proposed amendment will not be allowed because it simply repeats the existing
8 Claim 1.

9 In light of the determinations made above and in the order of dismissal with leave to
10 amend, the second amended petition is the operative pleading and the following claims remain
11 for adjudication: (1) the evidence was insufficient to support the conviction for continuous
12 sexual abuse of a child, in that there was insufficient evidence that the acts occurred in the
13 applicable time period; (2) the evidence was insufficient to support the conviction of aggravated
14 sexual assault of a child, in that the evidence was insufficient that Brewer accomplished the
15 assault with sufficient force; (3) Brewer's Sixth Amendment right to jury trial and fair notice of
16 the crimes charged was violated in that (a) he received multiple punishments for the same sexual
17 offenses pertaining to the same victim over the same time period, (b) his sentence was enhanced
18 on the basis of a statute that was not in existence at the time of the offense, and (c) the criminal
19 complaint was amended; (5) counsel provided ineffective assistance in failing to conduct a
20 reasonable pre-trial investigation; (6) the denial of Brewer's requests for appointment of counsel
21 (in place of self-representation) on the day set for trial and a week later violated his Sixth
22 Amendment right to counsel; and (7) his rights to due process, to present a defense, and to
23 confront witnesses were violated when the trial court restricted his cross-examination of a key
24 prosecution witness and restricted evidence that the victim previously had made a false
25 accusation of molestation. These claims warrant a response. Claims 4 and 8 have been
26 dismissed.

27 In order to move this action toward resolution, the court sets the following schedule:
28

1 1. The clerk shall serve by certified mail a copy of this order, the second
2 amended petition and all attachments thereto upon respondent and respondent's attorney, the
3 Attorney General of the State of California. The clerk shall also serve a copy of this order on
4 petitioner.

5 2. Respondent must file and serve upon petitioner, on or before **April 5, 2013**,
6 an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
7 showing cause why a writ of habeas corpus should not be issued. Respondent must file with the
8 answer a copy of all portions of the court proceedings that have been previously transcribed and
9 that are relevant to a determination of the issues presented by the second amended petition.

10 3. If petitioner wishes to respond to the answer, he must do so by filing a
11 traverse with the court and serving it on respondent on or before **May 3, 2013**.

12 4. Petitioner is responsible for prosecuting this case. Petitioner must promptly
13 keep the court informed of any change of address and must comply with the court's orders in a
14 timely fashion.

15 5. Petitioner is cautioned that he must include the case name and case number
16 for this case on any document he submits to this court for consideration in this case.

17 IT IS SO ORDERED.

18 DATED: January 9, 2013



SUSAN ILLSTON
United States District Judge

20
21
22
23
24
25
26
27
28